

STATE OF SOUTH CAROLINA

(Caption of Case)

App. of Time Warner Cable Information Services to
Amend its Certificate of Public Convenience and
Necessity to Provide Telephone Services in the
Service Area of PBT Telecom, Inc., and for
Alternative Regulation

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET

NUMBER: 2008 - 328 - C

(Please type or print)

Submitted by: Margaret M. Fox, EsquireSC Bar Number: 65418Address: McNair Law Firm, P. A.Telephone: 803-799-9800P. O. Box 11390Fax: 803-753-3219Columbia, SC 29211

Other: _____

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition ☐ Request for item to be placed on Commission's Agenda expeditiously

☐ Other: _____**INDUSTRY (Check one)****NATURE OF ACTION (Check all that apply)**

- | | | | |
|--|--|--|--|
| <input type="checkbox"/> Electric | <input type="checkbox"/> Affidavit | <input type="checkbox"/> Letter | <input type="checkbox"/> Request |
| <input type="checkbox"/> Electric/Gas | <input type="checkbox"/> Agreement | <input type="checkbox"/> Memorandum | <input type="checkbox"/> Request for Certification |
| <input type="checkbox"/> Electric/Telecommunications | <input type="checkbox"/> Answer | <input type="checkbox"/> Motion | <input type="checkbox"/> Request for Investigation |
| <input type="checkbox"/> Electric/Water | <input type="checkbox"/> Appellate Review | <input type="checkbox"/> Objection | <input type="checkbox"/> Resale Agreement |
| <input type="checkbox"/> Electric/Water/Telecom. | <input type="checkbox"/> Application | <input type="checkbox"/> Petition | <input type="checkbox"/> Resale Amendment |
| <input type="checkbox"/> Electric/Water/Sewer | <input type="checkbox"/> Brief | <input type="checkbox"/> Petition for Reconsideration | <input type="checkbox"/> Reservation Letter |
| <input type="checkbox"/> Gas | <input type="checkbox"/> Certificate | <input type="checkbox"/> Petition for Rulemaking | <input checked="" type="checkbox"/> Response |
| <input type="checkbox"/> Railroad | <input type="checkbox"/> Comments | <input type="checkbox"/> Petition for Rule to Show Cause | <input type="checkbox"/> Response to Discovery |
| <input type="checkbox"/> Sewer | <input type="checkbox"/> Complaint | <input type="checkbox"/> Petition to Intervene | <input type="checkbox"/> Return to Petition |
| <input checked="" type="checkbox"/> Telecommunications | <input type="checkbox"/> Consent Order | <input type="checkbox"/> Petition to Intervene Out of Time | <input type="checkbox"/> Stipulation |
| <input type="checkbox"/> Transportation | <input type="checkbox"/> Discovery | <input type="checkbox"/> Prefiled Testimony | <input type="checkbox"/> Subpoena |
| <input type="checkbox"/> Water | <input type="checkbox"/> Exhibit | <input type="checkbox"/> Promotion | <input type="checkbox"/> Tariff |
| <input type="checkbox"/> Water/Sewer | <input type="checkbox"/> Expedited Consideration | <input type="checkbox"/> Proposed Order | <input type="checkbox"/> Other: |
| <input type="checkbox"/> Administrative Matter | <input type="checkbox"/> Interconnection Agreement | <input type="checkbox"/> Protest | |
| <input type="checkbox"/> Other: | <input type="checkbox"/> Interconnection Amendment | <input type="checkbox"/> Publisher's Affidavit | |
| | <input type="checkbox"/> Late-Filed Exhibit | <input type="checkbox"/> Report | |

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October 23, 2008

Mr. Charles L. A. Terreni
Chief Clerk and Administrator
South Carolina Public Service Commission
Synergy Business Park, The Saluda Building
101 Executive Center Drive
Columbia, South Carolina 29210

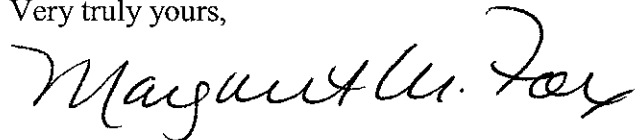
**Re: Application of Time Warner Cable Information Services
(South Carolina), LLC, d/b/a Time Warner Cable to Amend
its Certificate of Public Convenience and Necessity to Provide
Telephone Services in the Service Area of PBT Telecom, Inc.,
and for Alternative Regulation
Docket No. 2008-328-C**

Dear Mr. Terreni:

Enclosed for filing on behalf of PBT Telecom, Inc., please find a Return to Time Warner Cable's Motion to Compel or, In The Alternative, Motion *In Limine* in the above-referenced docket. By copy of this letter and certificate of service, a copy of this Return to Motion is being served on all parties of record.

Thank you for your assistance.

Very truly yours,



Margaret M. Fox

MMF/rwm
Enclosure

cc: Parties of Record

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

Docket No. 2008-328-C

IN RE: Application of Time Warner Cable Information)
 Services (South Carolina), LLC, d/b/a Time)
 Warner Cable to Amend its Certificate of Public)
 Convenience and Necessity to Provide)
 Telephone Services in the Service Area of)
 PBT Telecom, Inc., and for Alternative)
 Regulation)

RETURN TO TIME WARNER CABLE'S MOTION TO COMPEL OR, IN THE
ALTERNATIVE, MOTION *IN LIMINE*

Pursuant to 26 S.C. Code Ann. Regs. 103.829 and other applicable rules of the Public Service Commission of South Carolina, PBT Telecom, Inc. ("PBT") respectfully files this Return to Time Warner Cable's Motion to Compel PBT to Respond to Discovery Requests, or in the Alternative, Motion *In Limine*. By its motion, Time Warner Cable Information Services (South Carolina), LLC ("Time Warner Cable") requests an order compelling PBT to respond to Time Warner Cable's discovery requests, or alternatively, for an order barring PBT from raising the issues that approval of Time Warner Cable's application would adversely impact the availability of affordable local exchange service or adversely impact the public interest in this proceeding.

In response to Time Warner Cable's Motion, PBT respectfully submits as follows:

1. Time Warner Cable is the applicant in this proceeding. PBT is an intervenor. As stated in PBT's responses to Time Warner Cable's discovery, the purpose of the proceeding is to

determine whether Time Warner Cable meets the statutory requirements to be awarded a certificate of public convenience and necessity to provide certain services in PBT's service area. The focus of the proceeding will not be on PBT's financial condition or on any economic harm that may or may not result to PBT as a result of Time Warner Cable's entry into the market. PBT has intervened in this proceeding to attempt to determine exactly what services Time Warner Cable is seeking authority to provide in South Carolina, and whether Time Warner Cable meets the Commission's statutory requirements for doing so. As demonstrated in previous proceedings, Time Warner Cable has a history of being vague and circumspect in its description of the authority it seeks from the Commission and the corresponding obligations it intends to assume. Requiring PBT to turn over voluminous financial and operational information to a direct competitor in the context of this proceeding makes no sense. In fact, as a policy matter, subjecting intervenors to the detailed discovery sought by Time Warner Cable in this case may well chill future intervention in Commission proceedings, to the detriment of the administrative process, the Commission's ability to gain information necessary to its decision-making process, and the public interest.

2. Counsel for PBT has filed a motion to consolidate this proceeding with the proceedings in Docket Nos. 2008-325-C, 2008-326-C, 2008-327-C, 2008-329-C, and 2008-330-C. The Motion to Consolidate indicates that PBT and the other rural local exchange companies (collectively, "RLECs") intend to proceed as a group in these proceedings. While the focus of RLECs' participation will be to assist in defining the authority sought by Time Warner Cable and to raise legal and policy issues that are common to the group, the RLECs cannot guarantee, as Time Warner Cable has demanded, that "no issue concerning impacts on [PBT's] financial

condition will be addressed in the hearing[.]” See Time Warner Letter, attached as Exhibit 3 to Time Warner Cable Motion to Compel.

3. Likewise, regarding Time Warner Cable’s alternative Motion *in Limine*, excluding evidence on any potential adverse impact on the availability of affordable basic local exchange service or on the public interest in general would harm the Commission’s ability to make the necessary statutory findings before granting Time Warner Cable a certificate of necessity and convenience under S.C. Code Ann. § 58-9-280(B).

4. Finally, even if PBT’s financial condition were to become an issue in this proceeding, PBT has provided substantial financial information in response to Time Warner Cable’s discovery requests. The information provided includes five years’ worth of Telecommunications Company Annual Reports; State USF receipts; and federal USF projections. Telecommunications Company Annual Reports include detailed information on Operating Revenues and Expenses (including Net Income); Balance Sheet information; Retained Earnings information; and Access Lines (the last of which is the exact same information the Commission recently held to be a confidential trade secret for Time Warner Cable, the applicant in this proceeding).¹ The information contained in the Annual Reports is the same financial information upon which the Commission and the Office of Regulatory Staff rely in regulating the telecommunications companies.

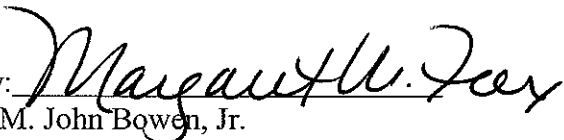
5. Furthermore, Time Warner Cable is being disingenuous in stating that PBT objected to ten out of fifteen interrogatories, and nine out of twelve requests for production. In fact, notwithstanding its objections, PBT provided full or partial answers to Interrogatories 1-3, 1-4, 1-5, 1-6, 1-8, 1-10, 1-11, 1-12, 1-13, 1-14, and 1-15; and to Requests for Production 1-1, 1-

¹ Certain of the information contained in PBT’s 2007 Annual Report is confidential, pursuant to Commission Order No. 2008-391 in Docket No. 2008-184-A.

2, 1-3, 1-5, 1-7, and 1-8. In addition, much of the information requested in Interrogatory 1-1 is contained in PBT's Telecommunications Company Annual Reports. PBT has provided Time Warner Cable with more than enough information to prepare its case.

WHEREFORE, for the reasons stated herein, PBT Telecom, Inc. respectfully requests that Time Warner Cable's Motion to Compel, or in the Alternative, Motion *In Limine*, be denied.

Respectfully submitted,

By: 

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ATTORNEYS FOR PBT
TELECOM, INC.

Columbia, South Carolina

October 23, 2008

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

Docket No. 2008-328-C

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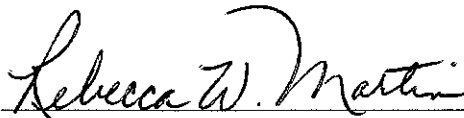
**CERTIFICATE
OF SERVICE**

This is to certify that I, Rebecca W. Martin, an employee with the McNair Law Firm, P. A., have this date served one (1) copy of a Return to Time Warner Cable's Motion To Compel or, In The Alternative, Motion *In Limine* in the above-referenced matter to the persons named below by causing said copy to be deposited with the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below.

Nanette S. Edwards, Esquire
Jeffrey M. Nelson, Esquire
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October 23, 2008

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